

1 BRUCE SCOTT DICKINSON, ESQ.
2 Nevada Bar No. 002297
3 MICHAEL HOTTMAN, ESQ.
4 Nevada Bar No. 008501
5 JACQUELYN M. FRANCO, ESQ.
6 Nevada Bar No. 13484
7 **STEPHENSON & DICKINSON, P.C.**
8 2820 West Charleston Boulevard, Suite B-19
9 Las Vegas, Nevada 89102
Telephone: (702) 474-7229
Facsimile: (702) 474-7237
email: admin@sdlawoffice.net

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11 Attorneys for Defendants

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LYNN ELYSE TRELL, an individual,

Plaintiff,

vs.

STEPHEN F. MCCUNE, an individual; SWIFT TRANSPORTATION CO., LLC, a foreign limited-liability company; DOES I through X; and ROE CORPORATIONS I though X, inclusive,

Defendants.

CASE NO.: 2:17-cv-01401-RFB-GWF

**STIPULATION FOR ENTRY OF
CONFIDENTIALITY PROTECTIVE
ORDER**

Pursuant to FRCP 26(c)(1), it is hereby stipulated and agreed by the undersigned counsel for each of the parties to this action that, in order to preserve and maintain the confidentiality of certain documents that contain proprietary, trade secret and confidential information and/or other documents or information which may otherwise be sensitive, and which will be obtained from Swift

1 Transportation Co. of Arizona, LLC (hereinafter "Swift Transportation") and related Swift
2 Transportation entities, the following Confidentiality Protective Order shall be entered by the Court.

3 Dated: September 1, 2017

MAIER GUTIERREZ & ASSOCIATES

4 */s/ Jason R. Maier*

5 By: _____

6 Jason R. Maier, Esq.
7 Nevada Bar No. 8557
8 8816 Spanish Ridge Avenue
9 Las Vegas, Nevada 89148
T: 702-629-7900
F: 702-629-7925
jrm@mgalaw.com
Attorneys for Plaintiff

10 Dated: September 1, 2017

11 STEPHENSON & DICKINSON

12 */s/ Bruce Scott Dickinson*

13 By: _____

14 Bruce Scott Dickinson, Esq.
Nevada Bar No. 2297
15 Michael Hottman, Esq.
Nevada Bar No. 8501
16 Jacquelyn M. Franco, Esq.
Nevada Bar No. 13484
17 2820 West Charleston Blvd., Suite B-19
18 Las Vegas, NV 89102
P: (702) 474-7229
F: (702) 474-7237
admin@sdlawoffice.net
Attorneys for Defendants

22 **CONFIDENTIALITY PROTECTIVE ORDER**

23 Pursuant to the foregoing stipulation of the parties, it is hereby ordered as follows:

24 1. Documents and information to be provided by Swift Transportation, that are claimed
25 to contain confidential information, including copies thereof and information contained in such
material, shall hereafter be referred to as "Protected Documents" and marked as "Confidential -
26 Subject to Protective Order," or similar language in accordance with the provisions of this Order
27 shall only be used, shown or disclosed as provided in this Order.

1 2. A list identifying Protected Documents will be provided to Plaintiff and updated as
2 necessary. The list itself will be considered a Protected Document.

3 3. As used in this Order, the term "documents" means all written material, videotapes
4 and all other tangible items, produced in whatever format (e.g., hard copy, electronic, digital, etc.)
5 and on whatever media (e.g., hard copy, videotape, computer diskette, CD-ROM, DVD, hard drive
6 or otherwise).

7 3. To preserve the formatting/presentation of certain data, certain documents will be
8 produced in their native format. These documents, produced in native format, will not be
9 individually stamped or labeled. Instead, the CDs containing the document will be labeled with the
10 confidential designation. Any person who copies the CDs or prints any of the documents stored on
11 the CDs must stamp or label the copies or prints with a Protected Documents designation.

12 4. The designated Protected Documents and copies shall be marked by placing the notice
13 "Confidential – Subject to Protective Order," or similar notice, on the document and all copies.

14 5. Protected Documents and any copies thereof received pursuant to this Order shall be
15 maintained confidential, shall be used only for preparation for the trial and prosecution of this
16 lawsuit, and maybe disclosed only to (a) Plaintiff; (b) Attorneys for Plaintiff and their paralegal and
17 clerical staffs, and (c) Experts and consultants retained or individuals consulted by Plaintiff or their
18 attorneys for assistance in trial preparation or for testimony ("Recipients"), provided that no
19 disclosure shall be made to any expert or consultant who is employed by a competitor of Swift
20 Transportation and related Swift Transportation entities.

21 6. Pursuant to Federal Rule of Evidence 502(d), in the event of disclosure (including
22 production) of Protected Documents that contain legally privileged information that a party or non-
23 party later claims was inadvertently disclosed, including, but not limited to, the attorney-client
24 privilege or work product doctrine, this agreement shall not constitute a waiver of the protections
25 afforded the inadvertent disclosure of the privileged information, pursuant to Federal Rule of Civil
26 Procedure 26(b)(5)(B) and Federal Rule of Evidence 502(e). The Receiving Party hereby agrees to
27 return, sequester, or destroy any privileged information disclosed or produced by the Producing Party
28

upon request. If the Receiving Party reasonably believes that privileged information has been inadvertently disclosed or produced to it, it shall promptly notify the Producing Party and sequester such information until instructions as to disposition are received. The failure of any party to provide notice or instructions under this Paragraph shall not constitute a waiver of, or estoppel to, any claim of attorney-client privilege, attorney work product, or other ground for withholding production as to which the Producing Party would be entitled in the litigation or any other federal or state proceeding. This provision is designed to foreclose any arguments that this agreement, or the disclosure of Protected Documents under it, waives a legally recognized claim of privilege, including without limitation the attorney-client privilege, work-product doctrine, or other applicable privilege because the disclosure:

- (a) was not inadvertent by the Producing Party;
 - (b) that the Producing Party did not take reasonable steps to prevent the disclosure of privileged Documents;
 - (c) that the Producing Party did not take reasonable or timely steps to rectify such Disclosure; and/or
 - (d) that such Disclosure acts as a waiver of applicable privileges or protections associated with such Documents.

7. Disclosure shall be made to Recipients only as necessary for the prosecution of the lawsuit and only after the Recipient has been informed of the terms of this Order and has agreed to be bound by it. Before Protected Documents are disclosed to anyone, the intended Recipient shall be first presented with a copy of this Order, and after reading it and agreeing to be bound by its terms, sign the attached form of "Written Assurance," attached as Exhibit A (hereinafter "Assurance"). Assurances signed by experts shall be provided to counsel for Swift Transportation, when experts are disclosed. Assurances signed by consultants, whether or not they are retained by the Plaintiff, shall be retained by Plaintiff's counsel for as long as they retain their file after termination of the case. Protected Documents shall not be disclosed to any person or in any manner not specified in this Order. Further, Protected Documents shall not be used for any purpose other than the prosecution of this lawsuit.

1 8. Persons having knowledge of Confidential Material and information by virtue of their
2 participation in the conduct of this litigation shall use them for that purpose only and only as
3 permitted herein, and shall not disclose such Confidential Material, their contents or any portion or
4 summary thereof to any person(s) not involved in the conduct of this litigation. If any person having
5 access to the Confidential Material herein shall violate this Order, he/she may be subject to sanctions
6 by the Court.

7 9. If any party wishes to file Protected Documents with the Court for any reason that
8 party shall comply with FRCP 26(c) and file redacted copies of the documents as necessary. The
9 party wishing to file Protected Documents must provide Swift Transportation's counsel with written
10 notice that the records and other documents lodged will be placed in the public Court file unless
11 Swift Transportation filed a timely motion or application to seal the records under FRCP
12 26(c)(1)(H). Within ten (10) days of this notification, Swift Transportation may file a motion or
13 application for an Order sealing the Protected Documents. Pending determination of the motion or
14 application, the lodge document(s) will be conditionally under seal. Until such time as the Court
15 issues an Order sealing the Protected Documents, the original party seeking to use the documents
16 may only refer the Court to the redacted version of the documents. Upon granting of an Order
17 sealing the record, the document(s) will be sealed and labeled by the Court clerk according to FRCP
18 26(c)(1)(H).

19 10. Protected Documents may be referred to by a party in notices, motions, briefs or any
20 other pleadings, may be used in depositions, and may be marked as deposition exhibits in this action.
21 No such documents or information shall be used, however, for any of these purposes unless it, or the
22 portion where it is revealed, is appropriately marked and protected from dissemination and, where
23 filing is necessary, separately filed under seal with the Court pursuant to the provisions of paragraph
24 9, above.

25 11. If, at the time of trial, a party intends to introduce into evidence any Protected
26 Documents, it shall, pursuant to FRCP 26(c)(1)(H), lodge the documents with the Court, file redacted
27 copies of the documents and provide Swift Transportation's counsel with written notice. Counsel for
28 Swift Transportation shall then have the burden to obtain a ruling regarding sealing of the records

1 under FRCP 26. Until a determination is made by the Court, the documents shall be lodged with the
2 Court conditionally under seal. In any event, a party intending to introduce Protected Documents
3 must allow 20 days to address the issues of preserving confidentiality with the Court.

4 12. Recipients of Protected Documents are, either by virtue of direct application of the
5 Order or by virtue of the execution of the Assurance referred to in paragraph 7 above, bound by the
6 terms and restrictions of this Order and are subject to the jurisdiction of this Court for the purpose of
7 enforcing the terms of this Order.

8 13. If a party wishes to modify this Order or its application to certain documents or
9 information, he shall first request such modification from all parties' counsel, and if no satisfactory
10 agreement is reached, may petition the Court for modification. Until modification is granted by
11 agreement or Order, terms of this Order will govern. In the event the Plaintiff petitions the Court to
12 modify this Order to certain documents or information, it shall be Swift Transportation's burden to
13 demonstrate to the Court that the documents it designates should remain protected.

14 14. This Order shall not preclude the parties from exercising any rights or raising any
15 objections otherwise available to them under the rules of discovery and evidence.

16 15. This Order shall continue to be binding throughout and after the conclusion of this
17 litigation, including all appeals. Within 30 days of termination of this lawsuit, by judgment,
18 settlement or voluntary dismissal, and upon request of Swift Transportation or its counsel, the
19 Plaintiff's counsel, and any recipients of Protected Documents, shall return to Swift Transportation's
20 counsel all such documents received under this Order; however, counsel for the Plaintiff may keep
21 an index of the documents for as long as they retain their file after termination of the case. If copies
22 of the Protected Documents or summaries containing substantive confidential information are made,
23 same will be returned to Swift Transportation's counsel or the recipient making said copy and/or
24 summary will affirm that said copy and/or summary has been destroyed sufficient so same is not
25 readily accessible; which includes but is not limited to Protected Documents stored in an electronic
26 media. Additionally, recipients shall return the Protected Documents with a signed "Confirmation of
27 Return of Protected Documents," attached as Exhibit B ("Confirmation"). The Confirmation shall be
28 affirmed by the recipient. The Confirmation shall also be signed by counsel for the Plaintiff

1 acknowledging that all documents provided by said counsel to the Recipient have been returned to
2 counsel for Swift Transportation in accordance with this Paragraph. However, any information
3 designated in accordance with this Order that becomes part of a record on appeal shall be returned
4 pursuant to this Paragraph after all appeals have been exhausted.

5 Notwithstanding any of the foregoing, or anything in this Protective Order to the contrary, the
6 provisions set forth in this Paragraph do not apply to court filing or pleadings, briefs, or
7 correspondence maintained by counsel in the ordinary course of business.

8 Further, nothing in this Protective Order shall have any impact on counsel's requirement
9 and/or obligation to preserve client files to the extent required by the Nevada Rules of Professional
10 Conduct or otherwise under Nevada law. Nor shall anyone subject to this Protective Order have an
11 obligation to attempt to destroy electronically stored data, backup files, cached versions, and/or data
12 on back up versions of computer hard drives.

13 16. Counsel shall undertake reasonable steps necessary to preserve the confidentiality of
14 such documents and information, including but not limited to: (1) monitoring the release of Protected
15 Documents to Recipients; (2) Obtaining the Assurances described in paragraph 7 above; and the
16 confirmation described in paragraph 15, above; and (3) Providing the Assurances and confirmations
17 to counsel for Swift Transportation in accordance with paragraphs 7 and 15, respectively, above.

18 17. If any person receiving documents covered by this Order is served with a subpoena,
19 order, interrogatory, or document or civil investigative demand (collectively, a "Demand") issued in
20 any other action, investigation, or proceeding, and such Demand seeks material that was produced or
21 designated as a Protected Documents, or requests information contained in a Protected Document,
22 the Receiving Party shall promptly object to producing the Protected Documents on the grounds of
23 the existence of this Protective Order; and give prompt written notice by hand or facsimile
24 transmission within five (5) business days of receipt of such Demand to the party or non-party who
25 produced the Protected Documents. The burden of opposing the enforcement of the Demand shall
26 fall upon the party or non-party who produced or designated the material as Confidential Material.
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1 Unless the party or non-party who produced or designated the Confidential Material obtains an order
2 directing that the Demand not be complied with, and serves such order upon the Receiving Party
3 prior to production pursuant to the Demand, the Receiving Party shall be permitted to produce
4 documents responsive to the Demand on the Demand response date, provided sufficient notice of the
5 Demand was provided. Compliance by the Receiving Party with any order directing production
6 pursuant to the Demand of any Confidential Material shall not constitute a violation of this Order.
7 Nothing in this Order shall be construed as authorizing a party to disobey a lawful subpoena issued
8 in another action.

9
10 18. In the event additional parties join or intervene in this litigation, the newly joined
11 party(ies) shall not have access to Confidential Material until its/their counsel has executed and, at
12 the request of any party, filed with the Court the agreement of such party(ies) and such counsel to be
13 fully bound by this Order.

14
15 19. The parties agree that nothing in this Order shall be deemed to limit the extent to which
16 counsel for the parties may advise or represent their respective clients, conduct discovery, prepare for
17 trial, present proof at trial, including any document herein, or oppose the production or admissibility
18 of any information or documents which have been requested.

20
21 **ORDER**

22 **IT IS SO ORDERED.**

23
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25 **UNITED STATES MAGISTRATE JUDGE**

26 DATED: September 5, 2017
27
28

1 EXHIBIT A

2 WRITTEN ASSURANCE

3 STATE OF _____

4 COUNTY OF _____

5 I, _____, hereby attest to my understanding that
6 information or documents designated confidential are provided to me pursuant to the terms and
7 conditions and restrictions of the Confidentiality Protective Order, in *Trell v. Swift Transportation, et*
8 *al.*, Case No. 2:17-cv-01401-RFB-GWF. I have been given and read both Stipulation for Entry of
9 Confidentiality Protective Order; Protective Order ("Protective Order") itself; and I understand their
10 terms. I agree that I shall not disclose to others, except in accordance with the Protective Order, such
11 information or documents including notes or other memorandum or writings regarding information
12 contained in them, and that such information or documents shall be used only for the purposes of the
13 legal proceeding in which they are produced. I further agree and attest to my understanding that my
14 obligation to honor the confidentiality of such information or documents will continue even after the
15 termination of the legal proceeding. I further agree and attest to my understanding that, in the event
16 that I fail to abide by the terms of the Protective Order, I may be subject to sanctions, including
17 sanctions by way of contempt of Court, imposed by the court for such a failure. Further, I agree to
18 subject myself to the jurisdiction of the United States District Court, District of Nevada, in and for
19 any contempt proceeding or other appropriate sanctions as the Court may deem proper for a violation
20 of the Court's Protective Order.

21
22 Recipient

23 On _____ before me, _____ (insert
24 name and title of the officer) personally appeared _____, who
25 proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
26 subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
27 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
28 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Notary Public

EXHIBIT B

CONFIRMATION OF RECEIPT OF DESIGNATED DOCUMENTS AND INFORMATION

STATE OF _____

COUNTY OF _____

I, _____, agree as follows:

1. My full name and business address are:

2. I agreed to be bound by the terms and conditions of the Stipulation for Entry of Confidentiality Protective Order; Confidentiality Protective Order (“Protective Order”) entered into by the parties in the matter of *Trell v. Swift Transportation, et al.*, Case No. 2:17-cv-01401-RFB-GWF. I acknowledged by consent to be so bound by executing a Written Assurance.

17 3. I acknowledge that I received documents or information designated as "Subject to
18 Confidentiality Protective Order," "Subject to Protective Order," "Confidential," or substantially
19 similar designation, for the sole purpose of assisting in the preparation for trial and/or testimony in
20 the above-captioned lawsuit.

21 4. Pursuant to paragraph 13 of the Protective Order identified above, I acknowledge that
22 I am obligated to return to counsel for Swift Transportation any and all documents or information
23 designated as "Subject to Confidentiality Protective Order," "Subject to Protective Order,"
24 "Confidential," or substantially similar designation, along with any all copies, prints, summaries, and
25 other reproductions of such documents or information, immediately upon termination of the above-
26 captioned lawsuit.

27 | // /

28 | //

5. Immediately upon being notified that this matter was terminated, I returned any and all documents or information along with all copies, prints, summaries and other reproductions of such documents or information to the person who provided them to me, subject to the exclusions as outlined in the Protective Order.

Recipient

On _____ before me, _____ (insert name and title of the officer) personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT OF COUNSEL

I am an attorney licensed to practice in the State of _____ . I hereby acknowledge receipt, from the declarant identified above, of all documents provided to said declarant by me or my office. Further, I hereby acknowledge delivering all documents received from the declarant to counsel for Swift Transportation immediately upon termination of the above-captioned lawsuit, as requested, in compliance with Paragraph 13 of the Stipulation for Entry of Confidentiality Protective Order and Protective Order between Swift Transportation and Plaintiff.

Signature of Counsel